

RICHARD BLUMENTHAL
ATTORNEY GENERAL



EX PARTE OR LATE FILED

55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
(860) 566-2026

Office of The Attorney General
State of Connecticut

May 3, 1996

DOCKET FILE COPY ORIGINAL

Tel. No. (860) 566-5374
Fax. No. (860) 523-5536

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW., Room 220
Washington, DC 20554

RECEIVED
MAY 6 1996
FCC MAIL ROOM

Re: CC Docket No. 96-61

Dear Mr. Caton:

Enclosed please find the original and 20 copies of the Comments of the National Association of Attorneys General Telecommunications Subcommittee to be filed in the above matter, as well as a Motion for Leave.

Thank you for your consideration.

Very truly yours,

A handwritten signature in cursive script, reading "Neil G. Fishman".

Neil G. Fishman
Assistant Attorney General

NGF:md
Enc.

No. of Copies rec'd _____
List ABCDE _____

0220

EX PARTE OR LATE FILED

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C.**

DOCKET FILE COPY ORIGINAL

In the Matter of:
Policies and Rules Concerning the
Interstate, Interexchange Marketplace

CC Docket No. 96-64

Implementation of Section 254(g)
of the Communications Act of
1934, as amended

RECEIVED
MAY 6 1996
FCC MAIL ROOM

MOTION FOR LEAVE TO FILE LATE FILED COMMENTS

The Telecommunications Subcommittee of the Consumer Protection Committee, National Association of Attorneys General requests leave to file late filed comments in the above captioned proceeding on the following grounds:

1. The Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General ("Subcommittee") is comprised of the Attorneys General of the states of Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Iowa, Idaho, Illinois, Indiana, Kansas, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Mississippi, North Carolina, North Dakota, New Jersey, New Mexico, Nevada, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Washington, West Virginia and Wisconsin.
2. Subcommittee members are responsible for the enforcement of state consumer protection laws and have previously participated in various proceedings before the Federal Communications Commission regarding consumer protection issues.

3. The Subcommittee experienced difficulties in circulating comments to submit in this matter and was unable to finalize comments until this date. The Subcommittee realizes this docket is proceeding on an expedited basis, but believes that the public interest will benefit from the full record in this proceeding.

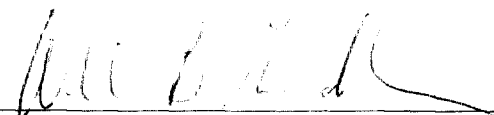
4. The Subcommittee believes that other commenters will not be prejudiced as reply comments are not due until May 24, 1996.

WHEREFORE, the Subcommittee respectfully requests that the Federal Communications Commission grant leave that the comments submitted herewith be entered in the record of this matter.

Dated this 3 day of May, 1996.

Respectfully submitted,

RICHARD BLUMENTHAL
Attorney General
State of Connecticut
Chairperson
Telecommunications Subcommittee
Consumer Protection Committee
National Association of Attorneys General



William B. Gundling
Associate Attorney General
110 Sherman Street
Hartford, CT 06105
860-566-5374

EX PARTE OR LATE FILED

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C.

JUL 6 1996

CC MAIL ROOM

DOCKET FILE COPY ORIGINAL

In the Matter of:
Policies and Rules Concerning the
Interstate, Interexchange Marketplace

)

)

CC Docket No. 96-61

)

)

Implementation of Section 254(g)
of the Communications Act of
1934, as amended

)

)

)

**COMMENTS OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
CONSUMER PROTECTION COMMITTEE, TELECOMMUNICATIONS
SUBCOMMITTEE**

The Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General ("the Subcommittee") files these Comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking seeking comments on the Commission's proposal to forbear from applying tariffing requirements to non-dominant interexchange carriers for domestic service ("NPRM"). Proposed Rule, FCC 96-123, CC Docket No. 96-61, 61 FR 14717 (April 3, 1996). The Subcommittee urges that the Commission investigate the impact on consumer protection before the Commission forbears tariff filing requirements.

**CURRENT CONSUMER PROTECTION CONCERNS
SHOULD BE CONSIDERED BEFORE FORBEARING
TARIFF FILING REQUIREMENTS.**

After considerable debate, Congress enacted the Telecommunications Act of 1996 (1996 Act) to deregulate telecommunications services. Section 401 of the Act authorizes the Commission to forbear from applying regulations only if the Commission determines that the regulations are not necessary to (1) ensure that charges and practices are just and reasonable, (2)

No. of Copies rec'd 0220
List ABCD

protect consumers, or (3) protect the public interest, in particular whether removal of the regulation will promote competition. The Subcommittee supports the expansion of competition in the telecommunications marketplace, but urges the Commission to carefully consider the increased potential for abusive and unfair practices which may increase as a result of deregulation.

The Commission's proposal to eliminate tariff filing by non-dominant carriers as set forth in the NPRM is based on the premise that market forces will achieve just, reasonable and nondiscriminatory rates. The NPRM tentatively concludes that "non-dominant carriers are unlikely to behave anticompetitively . . . because they recognize that such behavior would result in a loss of customers." NPRM ¶ 25. The NPRM also tentatively concludes that absent tariffs, competition would be more vigorous and that tariffs are superfluous for consumer protection since "competition circumscribes the prices and practices of these companies." NPRM, ¶ 26. Consumer protection will be "achieved effectively through market forces and the administration of the complaint process." NPRM, ¶ 28.

The Subcommittee questions whether these conclusions will hold true as competition unfolds. The telecommunications marketplace has changed dramatically since the Commission began the Competitive Carrier proceeding in 1979. While the economic assumptions underlying the Commission's proposal may apply in a perfect market, complaints filed with state Attorneys General, other law enforcement agencies, state public utility agencies, major interexchange carriers and the Commission itself, reveal a vastly different marketplace for many consumers.¹

¹ For example, Illinois Attorney General James E. Ryan reported that during 1995 his office received more consumer complaints about unauthorized switching of telecommunications services than any other service. These complaints represented 11% of the complaints received that year by Ryan's office. Chicago Sun-Times, NWS, p. 9, February 28, 1996.

The need for consumer protection is documented in other pending proceedings in which the Commission is considering complaints about pay-per-call service providers, "slamming" practices by unscrupulous interexchange service sellers and exorbitant charges by operator service providers.² The potential for consumer abuse can be staggering as exemplified by the practices of Sonic Communications, Inc., which used deceptive letters of authorization combined with check incentive offers to obtain millions of dollars in a few months by "slamming" hundreds of thousands of consumers.³ For these victims of fraud and deception, the evolving competitive forces in the telecommunications marketplace and complaint procedures have not provided adequate safeguards.

We recognize that tariffing requirements have not fully protected consumers against unfair and egregious practices, but it is not clear that the elimination of filed tariffs will augment protection. Historically, one of the functions filed tariffs served was to ensure that carrier charges and practices were just, reasonable and non-discriminatory. Tariffs also theoretically provided subscribers with notice of terms, conditions and prices related to telecommunication services. Recently, tariffs filed with the Commission have facilitated law enforcement efforts directed at fraudulent marketing practices.⁴ Furthermore, the Commission's policy for adjustment of "slamming" complaints - -rating charges that follow an unauthorized carrier change - - which we previously characterized as impractical,⁵ will be more difficult if tariffs are not readily available.⁶

² In the Matter of Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act. CC Docket No. 93-22; In the Matter of Petition for Rulemaking of the National Association of Attorneys General Proposing Additional Disclosure by Some Operator Service Providers. CC Docket No. RM-8606; In the Matter of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers. CC Docket No. 94-129.

³ In re Sonic Communications, Inc., U.S. Bkcy Ct N.D. Ga, Case No. 95-64899.

⁴ The public availability of tariffs furthered the investigation of Sonic Communications, Inc., conducted by several state Attorneys General during 1994.

⁵ See National Association of Attorneys General, Consumer Protection Committee,

The Subcommittee encourages the Commission to assure adequate consumer protection is afforded. In particular, the Subcommittee urges further review and comments before the Commission forbears from tariff filing requirements. The following areas are of particular concern.

Consumer information. Advertising and promotional practices must be truthful and not misleading or deceptive. Price comparisons must be based in fact, not contrived or illusory. Consumers have a right to know what they are buying, and there should be a record of the transaction. The free market works best when the consumers have the information they need to make sound purchase decisions.

Contract terms. "A deal is a deal." If a provider agrees to provide certain services at a certain price, it is unfair to increase the price or materially alter services without prior notice to the consumer. Consumers should have a chance to decide whether to continue under the new terms.

The elimination of tariffs should not occasion the introduction of adhesion contracts with onerous, one-sided terms such as excessive penalties for termination and default provisions.

Billing practices. A provider should not bill a consumer for services which the consumer has not ordered. The threat of disconnection of basic local phone service should not be used as a collection lever for telecommunication services other than payment of local service.

Telecommunications Subcommittee Motion for Reconsideration, In the Matter of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129.

⁶ In the Matter of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, 10 FCC Rcd.9560 (1995), para. 37.

Deceptive and Unfair practices. A provider should not engage in deceptive subscription or billing practices. The Commission should clearly and emphatically emphasize that carrier marketing and service practices are subject to state deceptive and unfair trade practice laws.⁷

Discriminatory practices. Without filed tariffs, carriers could more easily sell the same package of services at different prices, depending on the sophistication of consumers or the carrier's preference for consumers in certain areas, of certain ethnicities or certain incomes. Redlining - - the differentiation in services provided depending on the area in which one lives - - is a far too common feature of other types of services.

Dispute Resolution Procedures. The process for resolving consumer complaints must be made efficient and fair. The persistent problems with unauthorized or unordered service as reported in complaints about pay-per-call service providers and slammers warrant revision of current presumptions that subscribers are automatically responsible for any charge submitted to the subscriber's local exchange carrier.

CONCLUSION

The transition to a marketplace environment for interexchange services should provide as little opportunity as possible for unscrupulous providers to exploit consumers. The Commission should recognize the potential for abuse absent tariff filings that historically provided some protection to consumers.

We believe that there may be other unanticipated concerns related to consumer protection which may result from the Commission's tentative determination to forbear from non-dominant

⁷ Reliance on enforcement procedures is not sufficient to assure the public of fairness and stability in the competitive marketplace for telecommunication services in the future. As the Commission has experienced with complaints about pay-per-call and slamming practices, after the fact enforcement actions do little to restore public confidence in the marketplace.

tariff filing requirements. We are concerned that the conclusion that competition will protect consumers sufficiently does not reflect the reality of the experience in this marketplace. Under the current system, telecommunication services represent one of the largest areas of consumer complaints.

We strongly urge that the Commission investigate the impact on consumer protection before the Commission forbears on its tariff requirements.

Respectfully submitted,



RICHARD BLUMENTHAL

Attorney General

State of Connecticut

Chairperson

Telecommunications Subcommittee

Consumer Protection Committee

National Association of Attorneys General